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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SHMUEL SHAFFER, DENISE G. CABALLERO-McCANN,
LABHESH PATEL, and MUKUL JAIN

Appeal 2016-003637
Application 11/328,713
Technology Center 2400

Before CAROLYN D. THOMAS, SHARON FENICK, and
MICHAEL J. ENGLE, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–3, 5–7, 9–14, 16–18, 20–25, 27–29, and 31–34, all the pending claims in the present application. Claims 4, 8, 15, 19, 26, and 30 are canceled. *See* Claim Appendix. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

The present invention relates generally to providing an instant messaging camp-on service. *See* Abstract.

Claim 1 is illustrative:

1. A method for providing an instant messaging camp-on service, comprising:
receiving, via a first instant messaging device using a first communication method, a request from a first user to log into an instant messaging server;
receiving a request from the first user to camp-on an instant messaging availability of a second user, wherein the second user is currently unavailable, wherein the request to camp-on comprises a request from the first user to be notified via a second device using a second communication method of a change in the instant messaging availability of the second user, wherein the second device is different from the first instant messaging device and the second communication method is different from the first communication method;
monitoring the instant messaging availability of the second user;
determining that the second user is available via instant messaging;
notifying the first user via the second communication method of the change in the instant messaging availability of the second user; and
establishing a cross media exchange communication session, in response to determining that the second user is available via instant messaging, between the first user and the second user such that the first user is able to communicate with the second user, wherein the first user is communicating via the second device using the second communication method and the second user is communicating using instant messaging.

Appellants appeal the following rejections:

R1. Claims 1–3, 5–7, 11, 12–14, 16–18, 22–25, 27–29, 33, and 34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Zmudzinski (US 2004/0128310 A1, July 1, 2004) and Tovino (US 7,941,762 B1, May 10, 2011) (Final Act. 2–9); and

R2. Claims 9, 10, 20, 21, 31, and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Zmudzinski, Tovino, and Flynt (US 2006/0193450 A1, Aug. 31, 2006) (Final Act. 9–11).

ANALYSIS

Claims 1–3, 5–7, 9–14, 16–18, 20–25, 27–29, and 31–34

Issue: Did the Examiner err in finding that Zmudzinski teaches or suggests a first instant messaging device and a second device, as set forth in claim 1?

Appellants contend that

Zmudzinski merely discloses notifications between two users that are each on a different device — it does not disclose a single user that uses multiple devices for different purposes. . . . [T]he Examiner is interpreting the claimed “first instant messaging device” and “second device” from [c]laim 1 to be devices associated with *two different users* in *Zmudzinski*

(App. Br. 16).

The Examiner finds that

Zmudzinski explicitly states that “the subscriber runs IM software on PDA 100 (here mapped as the second device) . . . [and] [t]he subscriber also has available a cellular telephone 200 (mapped here as the first device)” . . . which clearly show that the subscriber (one single user) associated with two different devices (PDA 100 and telephone 200)

(Ans. 2) (emphasis omitted). We agree with the Examiner.

For example, Zmudzinski discloses that “the subscriber runs IM software on PDA **100** The subscriber also has available a cellular telephone **200**” (¶ 19). In Zmudzinski, “[a] presence profile request message A is sent from cellular telephone **200** to IM client proxy **300** . . . message A

requests that client proxy **300** initiate what appears to be a standard IM session . . .” (§ 22). Zmudzinski further discloses that the “IM server **30** may, from time to time as the status of the subscriber’s buddies changes, send updates to IM client proxy **300**. IM client proxy **300** can forward these updates to cellular telephone **200**. The cellular telephone can be configured to relay such updates immediately to the PDA” (§ 29).

In other words, Zmudzinski teaches a subscriber with a first instant messaging device, i.e., cellular telephone 200, sending a request to log into an IM server and the subscriber being notified via a second device, i.e., the PDA 100, of a change in the IM availability of a second user, i.e., the subscriber’s buddy. Thus, contrary to Appellants’ contention, Zmudzinski does indeed disclose a single user (the subscriber) that uses multiple devices (a PDA and a cellular telephone) for different purposes. Therefore, we find unavailing Appellants’ aforementioned contentions.

Appellants make additional arguments in the Reply Brief (Reply Br. 2–4). Appellants could have presented the new argument in support of claim 1 in the Appeal Brief, such that we would have had benefit of the Examiner’s evaluation of the argument in the responsive Answer. Appellants do not explain what good cause there might be to consider the new argument. Appellants’ new argument is thus untimely and has, accordingly, not been considered. *See Ex parte Borden*, 93 USPQ2d 1473 (BPAI 2010) (informative).

Accordingly, we sustain the Examiner’s rejection of claim 1. Appellants’ arguments regarding the Examiner’s rejection of independent claims 12, 23, and 34 rely on the same arguments as for claim 1, and Appellants do not argue separate patentability for the dependent claims. *See*

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App. Br. 15–17. We, therefore, also sustain the Examiner’s rejection of claims 2, 3, 5–7, 9–14, 16–18, 20–25, 27–29, and 31–34.

DECISION

We affirm the Examiner’s § 103(a) rejections R1 and R2 of claims 1–3, 5–7, 9–14, 16–18, 20–25, 27–29, and 31–34.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED